SECTION J, ATTACHMENT 2,
TITLE 5 OF THE UNITED STATES CODE

SEC. 8438. INVESTMENT OF THRIFT SAVINGS FUND

(a) For the purposes of this section -

(1) the term “Common Stock Index Investment Fund” means the Common Stock Index Investment Fund established under subsection (b)(1)(C);

(2) the term “equity capital” means common and preferred stock, surplus, undivided profits, contingency reserves, and other capital reserves;

(3) the term “Fixed Income Investment Fund” means the Fixed Income Investment Fund established under subsection (b)(1)(B);

(4) the term “Government Securities Investment Fund” means the Government Securities Investment Fund established under subsection (b)(1)(A);

(5) the term “International Stock Index Investment Fund” means the International Stock Index Investment Fund established under subsection (b)(1)(E);

(6) the term “net worth” means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves;

(7) the term “plan” means an employee benefit plan, as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3));

(8) the term “qualified professional asset manager” means -

(A) a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(2)) which -

(i) has the power to manage, acquire, or dispose of assets of a plan; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital in excess of $1,000,000;

(B) a savings and loan association, the accounts of which are insured by the Federal Deposit Insurance Corporation, which -

(i) has applied for and been granted trust powers to manage, acquire, or dispose of assets of a plan by a State or Government authority having supervision over savings and loan associations; and

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, equity capital or net worth in excess of $1,000,000;

(C) an insurance company which -

(i) is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan;

(ii) has, as of the last day of its latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $1,000,000; and

(iii) is subject to supervision and examination by a State authority having supervision over insurance companies; or

(D) an investment adviser registered under section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3) if the investment adviser has, on the last day of its latest fiscal year ending before the date of a determination for the purpose of this subparagraph, total client assets under its management and control in excess of $50,000,000, and -

(i) the investment adviser has, on such day, shareholder's or partner's equity in excess of $750,000; or

(ii) payment of all of the investment adviser's liabilities, including any liabilities which may arise by reason of a breach or violation of a duty described in section 8477 of this title, is unconditionally guaranteed by -

(I) a person (as defined in section 8471(4) of this title) who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the investment adviser and who has, on the last day of the person's latest fiscal year ending before the date of a determination for the purpose of this clause, shareholder's or partner's equity in an amount which, when added to the amount of the shareholder's or partner's equity of the investment adviser on such day, exceeds $750,000;

(II) a qualified professional asset manager described in subparagraph (A), (B), or (C); or

(III) a broker or dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) that has, on the last day of the broker's or dealer's latest fiscal year ending before the date of a determination for the purpose of this clause, net worth in excess of $750,000;

(9) the term “shareholder's or partner's equity”, as used in paragraph (8)(D) with respect to an investment adviser or a person (as defined in section 8471(4) of this title) who is affiliated with the investment adviser in a manner described in clause (ii)(I) of such paragraph (8)(D), means the equity shown in the most recent balance sheet prepared for such investment adviser or affiliated person, in accordance with generally accepted accounting principles, within 2 years before the date on which the investment adviser's status as a qualified professional asset manager is determined for the purposes of this section; and

(10) the term “Small Capitalization Stock Index Investment Fund” means the Small Capitalization Stock Index Investment Fund established under subsection (b)(1)(D).

(b) (1) The Board shall establish -

(A) a Government Securities Investment Fund under which sums in the Thrift Savings Fund are invested in securities of the United States Government issued as provided in subsection (e);

(B) a Fixed Income Investment Fund under which sums in the Thrift Savings Fund are invested in -

(i) insurance contracts;

(ii) certificates of deposits; or

(iii) other instruments or obligations selected by qualified professional asset managers, which return the amount invested and pay interest, at a specified rate or rates, on that amount during a specified period of time;

(C) a Common Stock Index Investment Fund as provided in paragraph (2);
(D) a Small Capitalization Stock Index Investment Fund as provided in paragraph (3); and
(E) an International Stock Index Investment Fund as provided in paragraph (4).

(2) (A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which is a reasonably complete representation of the United States equity markets.
(B) The Common Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index selected under subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Common Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(3) (A) The Board shall select an index which is a commonly recognized index comprised of common stock the aggregate market value of which represents the United States equity markets excluding the common stocks included in the Common Stock Index Investment Fund.
(B) The Small Capitalization Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the Small Capitalization Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(4) (A) The Board shall select an index which is a commonly recognized index comprised of stock the aggregate market value of which is a reasonably complete representation of the international equity markets excluding the United States equity markets.

(B) The International Stock Index Investment Fund shall be invested in a portfolio designed to replicate the performance of the index in subparagraph (A). The portfolio shall be designed such that, to the extent practicable, the percentage of the International Stock Index Investment Fund that is invested in each stock is the same as the percentage determined by dividing the aggregate market value of all shares of that stock by the aggregate market value of all shares of all stocks included in such index.

(c) (1) The Executive Director shall invest the sums available in the Thrift Savings Fund for investment as provided in elections made under subsection (d).
(2) If an election has not been made with respect to any sums in the Thrift Savings Fund available for investment, the Executive Director shall invest such sums in the Government Securities Investment Fund.

(d) (1) At least twice each year, an employee or Member (or former employee or Member) may elect the investment funds referred to in subsection (b) into which the sums in the Thrift Savings Fund credited to such individual's account are to be invested or reinvested.
(2) An election may be made under paragraph (1) only in accordance with regulations prescribed by the Executive Director and within such period as the Executive Director shall provide in such regulations.

(e) (1) The Secretary of the Treasury is authorized to issue special interest-bearing obligations of the United States for purchase by the Thrift Savings Fund for the Government Securities Investment Fund.
(2) (A) Obligations issued for the purpose of this subsection shall have maturities fixed with due regard to the needs of such Fund as determined by the Executive Director, and shall bear interest at a rate equal to the average market yield (computed by the Secretary of the Treasury on the basis of market quotations as of the end of the calendar month next preceding the date of issue of such obligations) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable earlier than 4 years after the end of such calendar month.

(B) Any average market yield computed under subparagraph (A) which is not a multiple of one-eighth of 1 percent, shall be rounded to the nearest multiple of one-eighth of 1 percent.

(f) The Board, other Government agencies, the Executive Director, an employee, a Member, a former employee, and a former Member may not exercise voting rights associated with the ownership of securities by the Thrift Savings Fund.

(g) (1) Notwithstanding subsection (e) of this section, the Secretary of the Treasury may suspend the issuance of additional amounts of obligations of the United States, if such issuances could not be made without causing the public debt of the United States to exceed the public debt limit, as determined by the Secretary of the Treasury.

(2) Any issuances of obligations to the Government Securities Investment Fund which, solely by reason of the public debt limit are not issued, shall be issued under subsection (e) by the Secretary of the Treasury as soon as such issuances can be issued without exceeding the public debt limit.

(3) Upon expiration of the debt issuance suspension period, the Secretary of the Treasury shall immediately issue to the Government Securities Investment Fund obligations under chapter 31 of title 31 that (notwithstanding subsection (e)(2) of this section) bear such interest rates and maturity dates as are necessary to ensure that, after such obligations are issued, the holdings of obligations of the United States by the Government Securities Investment Fund will replicate the obligations that would then be held by the Government Securities Investment Fund under the procedure set forth in paragraph (5), if the suspension of issuances under paragraph (1) of this subsection had not occurred.

(4) On the first business day after the expiration of any debt issuance suspension period, the Secretary of the Treasury shall pay to the Government Securities Investment Fund, from amounts in the general fund of the Treasury of the United States not otherwise appropriated, an amount equal to the excess of the net amount of interest that would have been earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period if -

(A) amounts in the Government Securities Investment Fund that were available for investment in obligations of the United States and were not invested during such debt issuance suspension period solely by reason of the public debt limit had been invested under the procedure set forth in paragraph (5), over

(B) the net amount of interest actually earned by the Government Securities Investment Fund from obligations of the United States during such debt issuance suspension period.

(5) On each business day during the debt limit suspension period, the Executive Director shall notify the Secretary of the Treasury of the amounts, by maturity, that would have been invested or redeemed each day had the debt issuance suspension period not occurred.

(6) For purposes of this subsection and subsection (h) of this section -

(A) the term “public debt limit” means the limitation imposed by section 3101(b) of title 31; and

(B) the term “debt issuance suspension period” means any period for which the Secretary of the Treasury determines for purposes of this subsection that the issuance of obligations of the United States may not be made without exceeding the public debt limit.

(h) (1) The Secretary of the Treasury shall report to Congress on the operation and status of the Thrift Savings Fund during each debt issuance suspension period for which the Secretary is required to take action under paragraph (3) or (4) of subsection (g) of this section. The report shall be submitted as soon as possible after the expiration of such period, but not later than 30 days after the first business day after the expiration of such period. The Secretary shall concurrently transmit a copy of such report to the Executive Director.

(2) Whenever the Secretary of the Treasury determines that, by reason of the public debt limit, the Secretary will be unable to fully comply with the requirements of subsection (e) of this section, the Secretary shall immediately notify Congress and the Executive Director of the determination. The notification shall be made in writing.

SEC. 8477. FIDUCIARY RESPONSIBILITIES; LIABILITY AND PENALTIES

(a) For the purposes of this section -
(1) the term “account” is not limited by the definition provided in section 8401(1);
(2) the term “adequate consideration” means -
(A) in the case of a security for which there is a generally recognized market -
(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934; or
(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the Thrift Savings Fund than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of any party in interest; and
(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor;
(3) the term “fiduciary” means -
(A) a member of the Board;
(B) the Executive Director;
(C) any person who has or exercises discretionary authority or discretionary control over the management or disposition of the assets of the Thrift Savings Fund; and
(D) any person who, with respect to the Thrift Savings Fund, is described in section 3(21)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(21)(A)); and
(4) the term “party in interest” includes -
(A) any fiduciary;
(B) any counsel to a person who is a fiduciary, with respect to the actions of such person as a fiduciary;
(C) any participant;
(D) any person providing services to the Board and, with respect to the actions of the Executive

Director as a fiduciary any person providing services to the Executive Director;

(E) a labor organization, the members of which are participants;

(F) a spouse, sibling, ancestor, lineal descendant, or spouse of a lineal descendant of a person described in subparagraph (A), (B), or (D);

(G) a corporation, partnership, or trust or estate of which, or in which, at least 50 percent of -

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation;

(ii) the capital interest or profits interest of such partnership; or

(iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by a person described in subparagraph (A), (B), (D), or (E);

(H) an official (including a director) of, or an individual employed by, a person described in subparagraph (A), (B), (D), (E), or (G), or an individual having powers or responsibilities similar to those of such an official;

(I) a holder (directly or indirectly) of at least 10 percent of the shares in a person described in any subparagraph referred to in subparagraph (H); and

(J) a person who, directly or indirectly, is at least a 10 percent partner or joint venturer (measured in capital or profits) in a person described in any subparagraph referred to in subparagraph (H).

(b) (1) To the extent not inconsistent with the provisions of this chapter and the policies prescribed by the Board, a fiduciary shall discharge his responsibilities with respect to the Thrift Savings Fund or applicable portion thereof solely in the interest of the participants and beneficiaries and -

(A) for the exclusive purpose of -

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the Thrift Savings Fund or applicable portions thereof;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives; and

(C) to the extent permitted by section 8438 of this title, by diversifying the investments of the Thrift Savings Fund or applicable portions thereof so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(2) No fiduciary may maintain the indicia of ownership of any assets of the Thrift Savings Fund outside the jurisdiction of the district courts of the United States.

(c) (1) A fiduciary shall not permit the Thrift Savings Fund to engage in any of the following transactions, except in exchange for adequate consideration:

(A) A transfer of any assets of the Thrift Savings Fund to any person the fiduciary knows or should know to be a party in interest or the use of such assets by any such person.

(B) An acquisition of any property from or sale of any property to the Thrift Savings Fund by any person the fiduciary knows or should know to be a party in interest.

(C) A transfer or exchange of services between the Thrift Savings Fund and any person the fiduciary knows or should know to be a party in interest.

(2) Notwithstanding paragraph (1), a fiduciary with respect to the Thrift Savings Fund shall not -

(A) deal with any assets of the Thrift Savings Fund in his own interest or for his own account;

(B) act, in an individual capacity or any other capacity, in any transaction involving the Thrift Savings Fund on behalf of a party, or representing a party, whose interests are adverse to the interests of the Thrift Savings Fund or the interests of its participants or beneficiaries; or

(C) receive any consideration for his own personal account from any party dealing with sums credited to the Thrift Savings Fund in connection with a transaction involving assets of the Thrift Savings Fund.

(3) (A) The Secretary of Labor may, in accordance with procedures which the Secretary shall by regulation prescribe, grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by paragraph (2).
(B) An exemption granted under this paragraph shall not relieve a fiduciary from any other applicable provision of this chapter.
(C) The Secretary of Labor may not grant an exemption under this paragraph unless he finds that such exemption is -
(i) administratively feasible;
(ii) in the interests of the Thrift Savings Fund and of its participants and beneficiaries; and
(iii) protective of the rights of participants and beneficiaries of such Fund.
(D) An exemption under this paragraph may not be granted unless -
(i) notice of the proposed exemption is published in the Federal Register;
(ii) interested persons are given an opportunity to present views; and
(iii) the Secretary of Labor affords an opportunity for a hearing and makes a determination on the record with respect to the respective requirements of clauses (i), (ii), and (iii) of subparagraph (C).
(E) Notwithstanding subparagraph (D), the Secretary of Labor may determine that an exemption granted for any class of fiduciaries or transactions under section 408(a) of the Employee Retirement Income Security Act of 1974 shall, upon publication of notice in the Federal Register under this subparagraph, constitute an exemption for purposes of the provisions of paragraph (2).

(d) This section does not prohibit any fiduciary from -
(1) receiving any benefit which the fiduciary is entitled to receive under this subchapter or subchapter III of this chapter as a participant or beneficiary;
(2) receiving any reasonable compensation authorized by this subchapter for services rendered, or for reimbursement of expenses properly and actually incurred,

in the performance of the fiduciary's duties under this chapter; or

(3) serving as a fiduciary in addition to being an officer, employee, agent, or other representative of a party in interest.

(e) (1) (A) Any fiduciary that breaches the responsibilities, duties, and obligations set out in subsection (b) or violates subsection (c) shall be personally liable to the Thrift Savings Fund for any losses to such Fund resulting from each such breach or violation and to restore to such Fund any profits made by the fiduciary through use of assets of such Fund by the fiduciary, and shall be subject to such other equitable or remedial relief as a court considers appropriate, except as provided in paragraphs (3) and (4) of this subsection. A fiduciary may be removed for a breach referred to in the preceding sentence.

(B) The Secretary of Labor may assess a civil penalty against a party in interest with respect to each transaction which is engaged in by the party in interest and is prohibited by subsection (c). The amount of such penalty shall be equal to 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of the Internal Revenue Code of 1986) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary of Labor shall prescribe by regulation consistent with section 4975(f)(5) of such Code) within 90 days after the date the Secretary of Labor transmits notice to the party in interest (or such longer period as the Secretary of Labor may permit), such penalty may be in an amount not more than 100 percent of the amount involved.

(C) A fiduciary shall not be liable under subparagraph (A) with respect to a breach of fiduciary duty under subsection (b) committed before becoming a fiduciary or after ceasing to be a fiduciary.

(D) A fiduciary shall be jointly and severally liable under subparagraph (A) for a breach of fiduciary duty under subsection (b) by another fiduciary only if -

(i) the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is such a breach;

(ii) by the fiduciary's failure to comply with subsection (b) in the administration of the fiduciary's specific responsibilities which give rise to the fiduciary status, the fiduciary has enabled such other fiduciary to commit such a breach; or

(iii) the fiduciary has knowledge of a breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

(E) The Secretary of Labor shall prescribe, in regulations, procedures for allocating fiduciary responsibilities among fiduciaries, including investment managers. Any fiduciary who, pursuant to such procedures, allocates to a person or persons any fiduciary responsibility shall not be liable for an act or omission of such person or persons unless -

(i) such fiduciary violated subsection (b) with respect to the allocation, with respect to the implementation of the procedures prescribed by the Secretary of Labor (or the Board under section 114 of the Federal Employees' Retirement System Technical Corrections Act of 1986), or in continuing such allocation; or

(ii) such fiduciary would otherwise be liable in accordance with subparagraph (D).

(2) No civil action may be maintained against any fiduciary with respect to the responsibilities, liabilities, and penalties authorized or provided for in this section except in accordance with paragraphs (3) and (4).

(3) A civil action may be brought in the district courts of the United States -

(A) by the Secretary of Labor against any fiduciary other than a Member of the Board or the Executive Director of the Board -

(i) to determine and enforce a liability under paragraph (1)(A);

(ii) to collect any civil penalty under paragraph (1)(B);
(iii) to enjoin any act or practice which violates any provision of subsection (b) or (c);
(iv) to obtain any other appropriate equitable relief to redress a violation of any such provision; or
(v) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title;

(B) by any participant, beneficiary, or fiduciary against any fiduciary -
(i) to enjoin any act or practice which violates any provision of subsection (b) or (c);
(ii) to obtain any other appropriate equitable relief to redress a violation of any such provision;
(iii) to enjoin any act or practice which violates subsection (g)(2) or (h) of section 8472 of this title; or

(C) by any participant or beneficiary -
(i) to recover benefits of such participant or beneficiary under the provisions of subchapter III of this chapter, to enforce any right of such participant or beneficiary under such provisions, or to clarify any such right to future benefits under such provisions; or
(ii) to enforce any claim otherwise cognizable under sections 1346(b) and 2671 through 2680 of title 28, provided that the remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for injury or loss of property caused by the negligent or wrongful act or omission of any fiduciary while acting within the scope of his duties or employment shall be exclusive of any other civil action or proceeding by the participant or beneficiary for recovery of money by reason of the same subject matter against the fiduciary (or the estate of such fiduciary) whose act or omission gave rise to such action or proceeding, whether or

not such action or proceeding is based on an alleged violation of subsection (b) or (c).

(4) (A)In all civil actions under paragraph (3)(A), attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of title 28), however all such litigation shall be subject to the direction and control of the Attorney General.

(B) The Attorney General shall defend any civil action or proceeding brought in any court against any fiduciary referred to in paragraph (3)(C)(ii) (or the estate of such fiduciary) for any such injury. Any fiduciary against whom such a civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such fiduciary (or an attested copy thereof) to the Executive Director of the Board, who shall promptly furnish copies of the pleading and process to the Attorney General and the United States Attorney for the district wherein the action or proceeding is brought.

(C) Upon certification by the Attorney General that a fiduciary described in paragraph (3)(C)(ii) was acting in the scope of such fiduciary's duties or employment as a fiduciary at the time of the occurrence or omission out of which the action arose, any such civil action or proceeding commenced in a State court shall be -

(i) removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division in which it is pending; and

(ii) deemed a tort action brought against the United States under the provisions of title 28 and all references thereto.

(D) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect. To the extent section 2672 of title 28 provides that persons other than the Attorney General or his designee may compromise and settle claims, and that payment of such claims may be made from agency appropriations, such provisions shall not apply to claims based upon an alleged violation of subsection (b) or (c).

(E) For the purposes of paragraph (3)(C)(ii) the provisions of sections 2680(h) of title 28 shall not apply to any claim based upon an alleged violation of subsection (b) or (c).

(F) Notwithstanding sections 1346(b) and 2671 through 2680 of title 28, whenever an award, compromise, or settlement is made under such sections upon any claim based upon an alleged violation of subsection (b) or (c), payment of such award, compromise, or settlement shall be made to the appropriate account within the Thrift Savings Fund, or where there is no such appropriate account, to the participant or beneficiary bringing the claim.

(G) For purposes of paragraph (3)(C)(ii), fiduciary includes only the Members of the Board and the Board's Executive Director.

(5) Any relief awarded against a Member of the Board or the Executive Director of the Board in a civil action authorized by paragraph (3) may not include any monetary damages or any other recovery of money.

(6) An action may not be commenced under paragraph (3)(A) or (B) with respect to a fiduciary's breach of any responsibility, duty, or obligation under subsection (b) or a violation of subsection (c) after the earlier of -

(A) 6 years after (i) the date of the last action which constituted a part of the breach or violation, or (ii) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation; or

(B) 3 years after the earliest date on which the plaintiff had actual knowledge of the breach or violation, except that, in the case of fraud or concealment, such action may be commenced not later than 6 years after the date of discovery of such breach or violation.

(7) (A) The district courts of the United States shall have exclusive jurisdiction of civil actions under this subsection.

(B) An action under this subsection may be brought in the District Court of the United States for the District of Columbia or a district court of the United States in the district where the breach alleged in the complaint or petition filed in the action took place or in the district where a defendant resides or may be found. Process may be served in any other district where a defendant resides or may be found.

(8) (A) A copy of the complaint or petition filed in any action brought under this subsection (other than by the Secretary of Labor) shall be served on the Executive Director, the Secretary of Labor, and the Secretary of the Treasury by certified mail.

(B) Any officer referred to in subparagraph (A) of this paragraph shall have the right in his discretion to intervene in any action. If the Secretary of Labor brings an action under paragraph (2) of this subsection on behalf of a participant or beneficiary, he shall notify the Executive Director and the Secretary of the Treasury.

(f) The Secretary of Labor may prescribe regulations to carry out this section.

(g) (1) The Secretary of Labor shall establish a program to carry out audits to determine the level of compliance with the requirements of this section relating to fiduciary responsibilities and prohibited activities of fiduciaries.

(2) An audit under this subsection may be conducted by the Secretary of Labor, by contract with a qualified non-governmental organization, or in cooperation with the Comptroller General of the United States, as the Secretary considers appropriate.

SEC. 8478. BONDING

(a) (1) Except as provided in paragraph (2), each fiduciary and each person who handles funds or property of the Thrift Savings Fund shall be bonded as provided in this section.

(2) (A) Bond shall not be required of a fiduciary (or of any officer or employee of such fiduciary) if such fiduciary -

(i) is a corporation organized and doing business under the laws of the United States or of any State;
(ii) is authorized under such laws to exercise trust powers or to conduct an insurance business;
(iii) is subject to supervision or examination by Federal or State authority; and
(iv) has at all times a combined capital and surplus in excess of such minimum amount (not less than $1,000,000) as the Secretary of Labor prescribes in regulations.

(B) If -

(i) a bank or other financial institution would, but for this subparagraph, not be required to be bonded under this section by reason of the application of the exception provided in subparagraph (A),
(ii) the bank or financial institution is authorized to exercise trust powers, and
(iii) the deposits of the bank or financial institution are not insured by the Federal Deposit Insurance Corporation,

such exception shall apply to such bank or financial institution only if the bank or institution meets bonding requirements under State law which the Secretary of Labor determines are at least equivalent to those imposed on banks by Federal law.

(b) (1) The Secretary of Labor shall prescribe the amount of a bond under this section at the beginning of each fiscal year. Except as otherwise provided in this paragraph, such amount shall not be less than 10 percent of the amount of funds handled. In no case shall such bond be less than $1,000 nor more than $500,000, except that the Secretary of Labor, after due notice and opportunity for hearing to all interested parties, and other consideration of the record, may prescribe an amount in excess of $500,000.

(2) For the purpose of prescribing the amount of a bond under paragraph (1), the amount of funds handled shall be determined by reference to the amount of the funds handled by the person, group, or class to be covered by such bond or by their predecessor or predecessors, if any, during the preceding fiscal year, or to the amount

of funds to be handled during the current fiscal year by such person, group, or class, estimated as provided in regulations prescribed by the Secretary of Labor.

(c) A bond required by subsection (a) -

(1) shall include such terms and conditions as the Secretary of Labor considers necessary to protect the Thrift Savings Fund against loss by reason of acts of fraud or dishonesty on the part of the bonded person directly or through connivance with others;

(2) shall have as surety thereon a corporate surety company which is an acceptable surety on Federal bonds under authority granted by the Secretary of the Treasury pursuant to sections 9304 through 9308 of title 31; and

(3) shall be in a form or of a type approved by the Secretary of Labor, including individual bonds or schedule or blanket forms of bonds which cover a group or class.

(d) (1)It shall be unlawful for any person to whom subsection (a) applies, to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Thrift Savings Fund without being bonded as required by this section.

(2) It shall be unlawful for any fiduciary, or any other person having authority to direct the performance of functions described in paragraph (1), to permit any such function to be performed by any person to whom subsection (a) applies unless such person has met the requirements of such subsection.

(e) Notwithstanding any other provision of law, any person who is required to be bonded as provided in subsection (a) shall be exempt from any other provision of law which would, but for this subsection, require such person to be bonded for the handling of the funds or other property of the Thrift Savings Fund.

(f) The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the provisions of this section, including exempting a person or class of persons from the requirements of this section.

SEC. 8478a. INVESTIGATIVE AUTHORITY

Any authority available to the Secretary of Labor under section 504 of the Employee Retirement Income Security Act of 1974 is hereby made available to the Secretary of Labor, and any officer designated by the Secretary of Labor, to determine whether any person has violated, or is about to violate, any provision of section 8477 or 8478.

[END OF SECTION]